IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 313 OF 1997
WITH
CRIMINAL REVISION APPLICATION NO. 314 OF 1997

Dilshad Begaum Ahmadkhan Pathan ..Petitioner

Vs.

1. Ahmadkhan Hanifkhan Pathan
and anr. ..Respondents

Mr. R.S. Kate for petitioner.
Mr. Mohan Dhamal for respondent no.1.
Ms. R.M. Gadhvi, APP for respondent no.2-State.

CORAM: B.H. MARLAPALLE, J.

Date of Reserve : January 15, 2007.

Date of Pronouncement: January 17, 2007.

ORAL JUDGMENT:

1. The petitioner-wife is aggrieved by the common Judgment and Order dated 26/9/1997 passed by the learned Additional Sessions Judge at Baramati, whereby the Revision Applications i.e. Revision Application Nos. 77 and 78 filed by the husband came to be decided.

2. The petitioner was married to the respondent no.1 on 29/5/1981 and she was allegedly driven out of the house by the respondent no.1-husband on 14/6/1989. She had filed Misc. Criminal Application No.558 of 1990 under Section 125 of Cr.P.C. claiming maintenance and the same was allowed by the learned Judicial Magistrate, First Class at Baramati on 31/12/1991 fixing the maintenance amount at Rs.200/- each for the petitioner-wife and her daughter. The said order came to be challenged by the respondent no.1-husband in a Revision Petition, which came to be dismissed on 6/12/1993. The husband filed Misc. Criminal Application No.84 of 1995 under Section 127 of Cr.P.C. for cancellation of the order of maintenance granted in MCA No.558 of 1990. At the same time, the petitioner-wife also filed MCA No.364 of 1995 for enhancement of the maintenance amount. Both these applications came to be decided by the learned JMFC on 19/9/1996, but by separate orders. MCA No.84 of 1995 filed by the husband came to be dismissed, whereas MCA No.364 of 1995 filed by the wife came to be allowed and the maintenance amount came to be revised to Rs.400/- p.m. for each of the

applicants i.e. wife and her daughter. Both these orders came to be challenged by the respondent no.1-husband in Criminal Revision Application Nos.77 and 78 of 1996 respectively. By the impugned order, the learned Additional Sessions Judge, Baramati was pleased to allow the Criminal Revision Application No.78 of 1996 and Criminal Revision Application No.77 of 1996 was partly allowed by setting aside the order of maintenance passed in MCA Nos.558 of 1990 and 364 of 1995 in favour of the wife, whereas the enhancement of maintenance amount fixed at Rs.400/- p.m. in favour of the minor daughter Rahimat came to be confirmed.

3. The learned JMFC in his order dated 19/9/1996 while rejecting the MCA No.84 of 1995 held that the factum of Talaq alleged to have been pronounced by the husband on 20/5/1994 in a Masjid could not be proved by him and consequently the wife was entitled for revision of the maintenance amount. The learned Additional Sessions Judge did not agree with the findings of the JMFC that the husband could not prove the factum of Talaa on reassessment of evidence

adduced by both the parties (documentary as well as oral). The learned Additional Sessions Judge held that the factum of Talaq was proved and, therefore, the wife was not entitled for the benefit of maintenance under Section 125 of Cr.P.C. and her rights were governed under the Muslim Women (Protection of Rights on Divorce) Act, 1986. The Additional Sessions Judge accepted the contentions of the husband that he had pronounced Talaq on 20/5/1994 in the presence of the witnesses in a Masjid and this was duly proved by his subsequent actions as well.

4. The record called from the court of the learned JMFC, Baramati shows that the husband had examined himself (PW 1) and two more witnesses i.e. Sattar Chand Atar (PW 2) and Musa Abbas Pathan (PW 3). On the other hand, the petitoner-wife had examined herself (DW 1) and her father Shri Kasam Usmanbhai Sayyed (DW 2). The husband in his depositions had stated that on 20/5/1994 he had pronounced Talaq and Talaqnama along with Advocate’s notice was sent by Regd. Post A.D. as well as the Mehar amount of Rs.125/- and the Iddat amount of Rs.600/- were sent by

money order to the divorced wife. The money order as well as the envelop sent by Regd. Post A.D. were returned by the postal authorities on the grounds that they were refused to be accepted. The husband also referred to the Advocate's notice dated 10/6/1994 published in one of the local newspaper (Pudhari) on 27/6/1994. PW 1 Sattar Chand Atar in his depositions admitted that he was present in the premises of the Masjid when the husband pronounced Talaq three times taking the name of the petitioner-wife. He also stated that another witness by name Pathan was also present when the husband pronounced Talaq. P.W.3 Musa Abbas Pathan also stated that on 20/5/1994 the husband had pronounced Talaq in the Masjid at village Pimpole and he knew both the spouses. He admitted in his cross-examination that he was not called upon to remain as a witness for the said Talaq but he denied the suggestion that he was not present in the Masjid at the relevant time and that he was making a false statement regarding the pronouncement of Talaq by the respondent no.1-husband on 20/5/1994. The evidence of the wife was silent regarding the oral Talaq on 20/5/1994 in the Masjid at village Pimpole. On the

contrary, she stated that on 12/5/1995 the husband had gone to her father's house and had requested her to join his company. This request was turned down by her father. In her cross examination she denied about the oral Talaq given on 20/5/1994.

5. It is noted from the record that in addition to the oral depositions of PW 1 to PW 3, there are documents placed in support of the husband's plea that he had pronounced Talaq and it was a valid Talaq. Exhs.32 and 33 are the money order slips for the amount of Rs.125/- and Rs.600/- respectively. The said money order receipts carry the following endorsement respectively :-

> "Dilshad Begum- I am sending Mehar amount of Rs.125/-. I have given you Talaq (divorce) as per Muslim Regligious practice on 20/5/1994. I have sent you separately additional amount of Rs.600/- towards Iddat."
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> "Dilshad Begum - I have given you Talaq on 20/5/1994. I am sending you in all Rs.600/-

being the maintenance amount for the Iddat period at the rate of Rs.200/- p.m. from 20/5/1994 to further three months."

. Exh. 34 which also carries the endorsement that it was refused to be accepted by the addressee, namely, the wife. The said envelop was opened in the court and it contained the Advocate’s notice regarding the Talaq on 20/5/1994 and a copy of the Talaqnama. Copy of the Marathi newspaper by name Pudhari was also placed on record and it shows that he had given oral Talaq to the petitioner-wife on 20/5/1994 at village Pimpole in the premises of the Masjid and in the presence of witnesses. It is thus clear that the factum of pronouncement of Talaq was proved by the husband.

6. The next question that is required to be considered is, whether proved pronouncement of Talaq could be sufficient for holding that the husband had given a legal Talaq as per the Muslims rules. This issue has to be considered in the backdrop of the full

bench decision of this court in the case of Dagdu Chotu Pathan vs. Rahimbi Dagdu Pathan and ors. **[2002 (3) Mh.L.J. 602].** In para 26 of the said judgment, the full bench of this court observed as under:-

> "26. The above discussion does indicate that mere pronouncement of Talaq by the husband or merely declaring his intentions or his acts of having pronounced the Talaq is not sufficient and does not meet the requirements of law. In every such exercise of right to Talaq the husband is required to satisfy the preconditions of arbitration for reconciliation and reasons for Talaq. Conveying his intentions to divorce the wife are not adequate to meet the requirements of Talaq in the eyes of law. All the stages of conveying the reasons for divorce, appointment of arbiters, the arbiters resorting to conciliation proceedings so as to bring reconciliation between the parties and the failure of such proceedings or a situation

> where it was impossible for the marriage to continue, are required to be proved as conditions precedent for the husband’s right to give Talaq to his wife. It is, thus, not merely the factum of Talaq but the conditions preceding to this stage of giving Talaq are also required to be proved when the wife disputes the factum of Talaq or the effectiveness of Talaq or the legality of Talaq before a Court of law. Mere statement made in writing before the Court, in any form, or in oral depositions regarding the Talaq having been pronounced sometimes in the past is not sufficient to hold that the husband has divorced his wife and such a divorce is in keeping with the dictates of Islam."

. Having regards to the facts of this case, it is evident that the above additional requirements for proving a valid or legal Talaq are not satisfied. The reasons for divorce, appointment of arbiters, the arbiters resorting to conciliation proceedings so as

to bring reconciliation between the parties and the failure of such proceedings or a situation where it was impossible for the marriage to continue, have not be proved in this case.

7. Mr. Dhamal the learned counsel for the respondent no.1-husband referred to the compromise dated 15/4/1994 and marked as Exh.41 in which it was agreed by the husband to transfer the 1/3rd land in the name of the wife if he failed to co-habit with her or failed to maintain her as his wife. There is no dispute that this document has not been acted upon and it would be useful to refer to the depositions of D.W.2, the father of the wife, who stated in his depositions that in the year 1994 on two occasions the husband had furnished such undertakings in writing to look after and maintain his wife and to co-habit with her and within a short time of signing such a compromise he had driven Dilshad Begaum out of his house. This document does not meet the above stated additional requirements in any manner and, therefore, the irresistible conclusion to be drawn in this case is that the Talaq pronounced by the respondent-husband

on 20/5/1994 was not a legal and valid Talaq.

8. Another full bench of this court in the case of Karim Abdul Rehman Shaikh vs. Shehnaz Karim Shaikh and ors. **[2000 (5) Bom.C.R. 758]** considered the main issue as to whether a Muslim divorcee woman is entitled for maintenance under Section 125 of Cr.P.C. and answered in the negative and held further that such a Muslim woman has the remedy for claiming maintenance under the Muslim Women (Protection of Rights on Divorce) Act, 1986. Thus, to deny benefit of claiming maintenance under Section 125 and further claiming revision in the said amount under Section 127 of Cr.P.C. can be legally denied to the Muslim divorcee women provided the competent court records a finding that the said divorce/Talaq was legal. As noted earlier, in the instant case, the husband could not prove that he gave a valid and legal Talaq to Dilshad Begaum, the present applicant and, therefore, the view taken by the revision court in the impugned decision is unsustainable. Consequently, the orders passed by the Learned Judicial Magistrate, First Class on 19/9/1996 in Misc. Criminal Application No.364/95

and in Misc. Criminal Application No.84/95 will have to be upheld. Both these applications were decided by the learned JMFC at Baramati in favour of the wife.

9. In the premises, these revision applications filed by the wife succeed and the common judgment rendered by the learned Additional Sessions Judge, Baramati allowing two separate Criminal Revision Applications filed by the husband is hereby quashed and set aside and the orders passed by the learned JMFC at Baramati in Misc. Criminal Application No.84/95 and Misc. Criminal Application No.364/95 are hereby confirmed.

. Rule made absolute in terms of the above order.

(B.H. Marlapalle,J.)